

**Examiner Katcheves, I would like to discuss the following with you telephonically regarding Claim 80, 90 and 96:**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Daniel W. TOLLENAAR

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Examiner: Basil S. Katcheves

FOR: DRYWALL BACKING APPARATUS  
AND METHOD OF INSTALLING SAME

**PROPOSED AMENDMENT FOR DISCUSSION WITH EXAMINER**

**KATCHEVES**

80. (Currently amended) An apparatus for providing backing for studs in a wall, said apparatus comprising:

a first backing member having a first end and a second end, a front side and a back side, the front side being disposed substantially in a first plane;

a second backing member having a first end and a second end, a front side and a back side, the front side of the second backing member being disposed substantially in said first plane;

~~a first substantially planar structure~~ operatively attached to said first and second backing members and ~~spanning therebetween~~ for spacing the second end of the first

backing member a predetermined distance from the first end of the second backing member and such that the front side of the first backing member and the front side of the second backing member generally lie along a first plane the first substantially planar structure being disposed in a plane substantially parallel to said first plane and overlapping at least a portion of said second end of said first backing member and at least a portion of said first end of said second backing member, whereby the first backing member is placed between a first upright stud having a side disposed in a plane that is substantially similar to said first plane and a second upright stud having a side disposed in a plane that is substantially similar to said first plane, the second upright stud spaced from the first upright stud and whereby the second backing member can be disposed between the second upright stud and a third upright stud spaced from the second upright stud such that the second end of the first backing member is adjacent to and on one side of the second upright stud and the first end of the second backing member is adjacent to and on another side of the second upright stud and wherein the predetermined distance is approximately the width of a portion of the second upright stud.

**Note that member 123 of the Porter '534 patent is not “spanning therebetween”** which means that “the first substantially planar structure being disposed in a plane substantially parallel to said first plane and overlapping at least a portion of said second end of said first backing member and at least a portion of said first end of said second backing member”, as recited above in claim 80. Porter 123 shown in pink on the **attached color coded Fig 10** clearly does not contain these limitations highlighted in pink as contended in the last two Office Actions.

90. (Currently Amended) A wall comprising:

a first upright stud having a side disposed in first plane;

a second upright stud to one side of and spaced from the first stud having a side disposed in said first plane;

a third upright stud to one side of and spaced from the second stud having a side disposed in said first plane;

a first backing member disposed between the first and second studs, said first backing member having a front planar surface on a front side thereof;

a second backing member disposed between the second and third studs, said second backing member having a front planar surface on a front side thereof, said front planar surface disposed in a plane that is substantially similar to said first plane; and

a first substantially planar structure operatively attached to the first and second backing members and spanning therebetween, said first substantially planar structure further being attached to at least one of the first, second or third upright studs and being disposed in a plane substantially parallel to the plane of said front planar surface of the first and second backing members and at least overlapping at least a portion of said second end of said first backing member and at least a portion of said first end of said second backing member.

**Note that member 123 of the Porter ‘534 patent is not “spanning therebetween”** which means as recited above. Porter 123 shown in **pink** on the **attached color coded Fig 10** clearly does not contain these limitations **highlighted in pink** as contended in the last two Office Actions. The “**spanning therebetween**” language and the “**and at least overlapping at least a portion of said second end of said first backing member and at least a portion of said first end of said second backing member**” was in the claim 90 before but was ignored. (Note also that if you try to change your rejection to read “**first substantially planar structure**” on member 127, instead of member 123, u-shaped bracket is not “substantially planar” as recited in claim 90.)

96. (Currently Amended) A wall comprising:

- a first upright stud **having a side disposed in a first plane;**
- a second upright stud **having a side disposed in said first plane** spaced in relation to the first upright stud to define a first space therebetween;
- a third upright stud **having a side disposed in said first plane** supported in spaced relation to the second upright stud to define a second space therebetween;
- a fourth upright stud **having a side disposed in said first plane** supported in spaced relation to the third upright stud to define a third space therebetween;
- a first backing member sized to be received in the first space and extend between the first and second upright studs, said first backing member having a front planar surface

on a front side thereof, said front planar surface disposed in a plane that is substantially similar to said first plane;

a second backing member sized to be received in the second space and extend between the second and third upright studs, said second backing member having a front planar surface on a front side thereof, said front planar surface disposed in a plane that is substantially similar to said first plane;

a third backing member sized to be received in the third space and extend between the third and fourth upright studs; and

a substantially planar spacer attached to the first, second and third backing members and at least one of the first, second, third, and fourth upright studs such that the first backing member is supported in the first space and the second backing member is supported in the second space and the third backing member is supported in the third space, said substantially planar spacer being disposed in a plane substantially parallel to the plane of said front planar surface of the first and second backing members.

Note that claim 96 provides that the substantially planar spacer is attached to the first, second and third backing members. At most, the non-planar saddle of Porter 123 is only attached to two backing members 128, i.e. this claim is not anticipated by Porter.